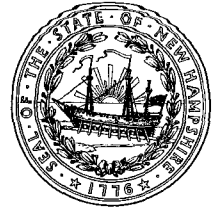




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Ron Brown
289 Mill Street
Haverhill, Massachusetts 01830

Re: Violations of RSA 485-A:17
Map 62 Lots 40 and 41,
Plaistow, New Hampshire
Alteration of Terrain Permit # WPS-6675

ADMINISTRATIVE ORDER
No. WD 06-002

January 11, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Ron Brown, pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.
2. Ron Brown is an individual having a mailing address of 289 Mill Street, Haverhill, Massachusetts 01830.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
3. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
4. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.

5. Mr. Brown is the owner of property located in Plaistow, NH, more particularly identified on Town of Plaistow Tax Map 62 as Lots 40 and 41 ("the Property").

6. On May 10, 2005, DES personnel met with Mr. Brown on the Property in response to a complaint from the Town of Plaistow. Mr. Brown was present during DES' inspection of the Property. During the inspection the following was observed:

- a) Approximately 10 acres of exposed soils were observed, well in excess of the approved 3 acre maximum;
- b) Individual house lots had been cleared and stumped, although they had not been included in the permit application;
- c) Appropriate erosion control measures had not been installed or maintained on the Property;
- d) The disturbed area had not been stabilized;
- e) The level spreader at Station 12 +25 had not been constructed per the approved plan; and,
- f) The detention basin at Station 18 had not been constructed per the approved plan.

7. On May 16, 2005, DES issued a Letter of Deficiency # WD- WQE 05-03 ("LOD"). The LOD requested that Mr. Brown:

- a) Discontinue all activities on the Property;
- b) Stabilize the exposed spoils;
- c) Install erosion control measures at the edge of wetlands;
- d) Maintain erosion control structures;
- e) Loam, seed and mulch all areas that were at final grade;
- f) Install erosion control blankets on any slopes steeper than 3:1; and,
- g) Submit updated/amended plans to DES for field changes made during construction.

8. On June 24, 2005 and on July 27, 2005, DES personnel conducted a follow-up inspection of the Property. Personnel from the United States Environmental Protection Agency were present during the July inspection(s). During the inspections the following were observed:

- a) All previously exposed soils remained unstable;
- b) Work appeared to be continuing on the installation of utilities;
- c) Silt fence had been installed to protect water resources; and,
- d) Erosion control blankets had not been installed on any slopes steeper than 3:1.

9. On October 31, 2005, DES personnel conducted a follow-up inspection of the Property. During the inspection it was observed that approximately 10 acres of exposed soils remained unstable. None of the exposed areas had been mulched nor had erosion control blankets been installed on slopes, as requested in the LOD.

D. DETERMINATION OF VIOLATIONS

1. Ron Brown has violated RSA 485-A:17 and Env Ws 415.03(a) by failing to obtain a permit for alteration of terrain of the individual building lots on the Property
2. Ron Brown has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property.
3. Ron Brown has violated RSA 485-A:17 and Env-Ws 415.09(j) by failing to stabilize disturbed areas within the Property.

E. ORDER

Based on the above findings, DES hereby orders Ron Brown as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **Within 20 days of this Order**, prepare a temporary stabilization plan ("Plan") for the Property, and submit the Plan to DES for approval. The Plan shall be prepared by a Professional Engineer or a Certified Professional in Erosion and Sediment Control. The Plan shall include a schedule for implementing the measures described in the Plan.
3. **Within 30 days of the date of this Order**, implement the approved Plan on the Property, as conditioned by DES, according to the schedule detailed in the Plan. At a minimum, the following activities shall be completed:
 - a) Apply an erosion control mix, to a minimum thickness of 4 inches on all unstabilized/unvegetated areas with slopes of greater than 10%. Accumulated snow must be removed to a one-inch depth or less prior to application. The erosion control mix shall meet the following minimum specifications:
 - i. The organic matter content shall be between 80 and 100%, dry weight basis;
 - ii. Particle size by weight shall be 100% passing a 6" screen and a minimum of 70 %, maximum of 85 %, passing a 0.75" screen;
 - iii. The organic portion needs to be fibrous and elongated;
 - iv. Large portions of silts, clays or fine sands are not acceptable in the mix;
 - v. Soluble salts content shall be less than 4.0 mmhos/cm; and,
 - vi. The pH should fall between 5.0 and 8.0.
 - b) Place non-erodible granular backfill on all unpaved road or travel surfaces.
4. **Within 60 days of the date of this Order**, submit to DES an after-the-fact amendment to the Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.

5. Submit the temporary stabilization plan and the amendment to the Site Specific permit, and the names of professionals retained, to:

Ana Herrero, Compliance Specialist
NH Department of Environmental Services
P.O. Box 95
Concord, NH 03302-0095
(603) 271-3380
aherrero@des.state.nh.us

F. APPEAL

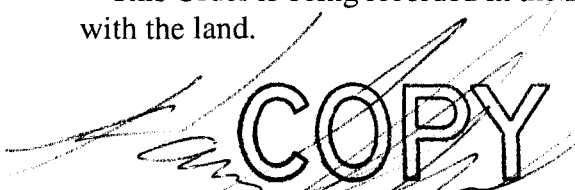
Any person aggrieved by the determinations of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.


Filing an appeal of the Order will not automatically relieve Mr. Brown of his obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Brown remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Brown's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

CERTIFIED MAIL # 7099 3400 0018 1293 0578

cc: Rene Pelletier, P.G., Assistant Director, Water Division
Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Rockingham County Registry of Deeds
Plaistow Planning Board
Plaistow Conservation Commission